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Letter of Appeal
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RE: APPEAL

This is an Appeal by the Consortium Escuelas Católicas ("Consortium") on behalf of 14 member applicants who had their Funding Year 2014 funding commitments for Priority One services rescinded via Notification of Commitment Adjustment Letters ("COMADs") issued by the Universal Service Administrative Company ("USAC") on May 4, 2015. As demonstrated in this Appeal, the Consortium did not file a generic or encyclopedic Form 470. Furthermore, the denial of approximately \$524,838 in requested E-rate funds – of which \$190,128 had already been disbursed and would have to be returned – is nothing more than the result of a misunderstanding generated because Consortium personnel who prepared the responses are native Spanish speakers reading and responding to USAC questions in English.

Below is the name, address, telephone number, fax number, and email address of the person who can most readily discuss this Appeal with USAC:

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If USAC desires to discuss this Appeal, the undersigned respectfully requests that USAC make available a person who speaks Spanish or, if the discussion is to occur via email, that the correspondence be in Spanish.

The COMADs that are the subject of this Appeal are dated May 4, 2015, thus establishing an appeal deadline of July 3, 2015. The chart below contains the billed entity name, the billed entity number ("BEN"), the FCC Form 470 application number, the FCC Form 471 application number, the Funding Request Numbers ("FRNs"), and the FCC Registration Number.

| Billed Entity Name | BEN | 470 # | 471 # | FRNs ¹ | FCC Registration # |
|------------------------------------|--------|-----------------|--------|----------------------|--------------------|
| Academia Santa Teresita | 200008 | 695880001213885 | 987429 | 2693595 (Telecom) | 0013457403 |
| | | 695880001213885 | 987261 | 2693107, 2693509 | 0013457403 |
| Colegio San Jose Elemental | 199864 | 695880001213885 | 978025 | 2664464, 2664478 | 0013457910 |
| Colegio San Jose Superior | 216679 | 695880001213885 | 979726 | 2669934, 2669947 | 0013457965 |
| Colegio San Felipe | 159193 | 695880001213885 | 978146 | 2664769, 2664794 | 0013458245 |
| Colegio Sagrada Familia | 198178 | 695880001213885 | 978169 | 2664767, 2664810 | 0013458120 |
| Colegio San Rafael | 158943 | 695880001213885 | 978939 | 2667147, 2667184 | 0014592372 |
| Colegio Católico La Merced | 200051 | 695880001213885 | 983530 | 2681363, 2681375 | 0014361380 |
| Colegio San Juan Bosco | 159199 | 695880001213885 | 991149 | 2704836, 2704875 | 0013458278 |
| Colegio Nuestra Señora del Rosario | 198187 | 695880001213885 | 979223 | 2667961, 2667979 | 0013458112 |
| Consortium Escuelas Católicas | 231955 | 695880001213885 | 991208 | 2704999 | 0013458005 |
| Colegio San Juan Bautista | 159097 | 695880001213885 | 978093 | 2664808 | 0013458260 |
| Academia San Alfonso | 199998 | 695880001213885 | 982395 | 2678191 | 0014347017 |
| Colegio Nuestra Señora del Carmen | 158961 | 695880001213885 | 987324 | 2693391 | 0014605125 |
| Academia Cristo de Los Milagros | 157732 | 695880001213885 | 983348 | 2680925 | 0014341960 |

I. Background

The Superintendence of Catholic Schools of Arecibo and the Superintendence of Catholic Schools of Caguas created the Consortium Escuelas Católicas in an effort to assist their schools apply for E-rate funds, lower costs, increase efficiency and facilitate compliance with the E-rate program's rules. Collectively, there are 13 member schools in the Consortium with a combined enrollment of approximately 6,387 students in grades K through 12.

As discussed below, USAC sent letters to some – but not all – of the Consortium's members asking for information as to who prepared the Form 470 and whether any service provider assisted with the completion and/or posting of the Form 470. USAC also alleged that the service descriptions listed on the Form 470 appeared to be "generic" or "encyclopedic" and asked some – but not all – Consortium members for an explanation about how they determined the services that were listed on the Form 470.

¹ Except as otherwise indicated, all FRNs are for Internet Access service.

The responses by members of the Consortium stated the following: (1) Gilberto Perez Ortiz, contact person for the Consortium, and Maria M. Agosto de Feliciano, the Superintendent, were responsible for preparing and filing FCC Form 470 # 695880001213885; (2) no service provider employee assisted with the completion and/or posting of Form 470; and (3) the services listed in the Form 470 were all eligible services and *"Because of, it is necessary to complete a list with the eligible services due to the 470 form is completed for a Consortium where various institutions participate and the services and necessities are different and individual in each school."* The Consortium further stated that *"This is done with the objective at the moment to complete 471 and 472 forms the schools may be able to select without limits its services."*

USAC's questions were provided only in English. The Form 470 and its Instructions are available only in English. Consortium personnel who prepared the responses are native Spanish speakers and are not fluent in English. Oddly, despite the obvious lack of clarity in the above quoted response, USAC did not attempt to clarify the response by means of any follow-up questions in either English or Spanish.

On May 4, 2015, and with respect to FCC Form 470 # 695880001213885, USAC issued COMADs rescinding *all* of the funding commitments for Priority One services for *all* member applicants of the Consortium. USAC stated the following reason for the rescission:

After multiple requests for documentation and application review, it has been determined that this funding commitment must be rescinded in full. The FCC Form 470# 695880001213885 that established the bidding for this FRN is encyclopedic. Furthermore, a Request for Proposal was not issued to narrow the scope of the desired services to only those that you actually applied for in this funding request. FCC rules require that applicants submit bona fide requests for services by conducting an internal assessment of the components necessary to use effectively the discounted services ordered and submitting a complete description of services requested so that it may be posted for competing providers to evaluate. During our review, you were asked why the service descriptions listed on your FCC Form 470 appeared to be generic or encyclopedic. Specifically you were asked to explain how you determined the services to request on your FCC Form 470. You responded that the services listed in the FCC Form 470 were obtained from the Schools and Libraries Division (SLD)s Eligible Services List available on USACs website at:

<http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx>.

Furthermore, you indicated that you referenced a complete list of eligible services so that schools may select services without limits. Per the FCC's Ysleta Order, an applicant's FCC Form 470 must be based upon its carefully thought-out technology plan and must detail specific services sought in a manner that would allow bidders to understand the specific technologies that the applicant is seeking. An FCC Form 470 should not be a general, open-ended solicitation for all services available on the Eligible Services List, with the hope that bidders will present more concrete proposals. Thus, a FCC Form 470 that sets out virtually all elements that are on the Eligible Services List would not allow a bidder to determine what specific services the applicant was seeking. Because you relied on an encyclopedic FCC Form 470, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

For the reasons discussed below, USAC erroneously rescinded the funding commitments for Priority One services. The Consortium and the members it represents respectfully request that USAC grant this Appeal and that the COMADs be rescinded.

II. The Consortium's Form 470 was not generic or encyclopedic, nor was it an open-ended solicitation for all services available on the Eligible Services List.

Consistent with its Technology Plan, the Consortium *did not* list all of the Priority One (Telecommunications and/or Internet Access) services listed in the Eligible Services List ("ESL"). This is obvious by conducting a comparison of the Consortium's Form 470 and the ESL for Funding Year 2014.

The Consortium sought bids for basic conduit access to the Internet through any of these technologies: DSL, fiber/dark fiber, T1 or fractional T1 lines, or wireless. Any of these technologies would represent feasible technical solutions to our schools. Therefore, the Consortium limited its request for bids to a defined set of technologies while, at the same time, providing its member schools with flexibility to select the particular services that best fits their individual needs. Listed below are the eligible services that were *excluded* from the Form 470:

- A. The Consortium *did not* seek bids for conduit access to the Internet through broadband over power lines (BPL), an eligible service under the ESL, because this technology is not available in Puerto Rico. In fact, the only entity that could possibly offer this service would be the Puerto Rico Electric Power Company, which is currently on the brink of financial collapse.²
- B. The Consortium *did not* seek bids for conduit access to the Internet through cable modem because such service would only have made sense if its members had an existing cable connection, which they do not because such video services are unnecessary to fulfill their educational mission.
- C. The Consortium *did not* seek bids for conduit access to the Internet through satellite service because, to the best of the Consortium's knowledge, currently there are no service providers in Puerto Rico that offer satellite-based Internet service to schools and libraries under the E-rate program. Furthermore, satellite-based Internet service is not as reliable as other technologies for a tropical island like Puerto Rico because of frequent periods of heavy rainfall, tropical storms and hurricanes.
- D. The Consortium *did not* seek bids for conduit access to the Internet through telephone dial-up service because such service simply does not provide the bandwidth necessary for our schools.
- E. The Consortium sought bids for Basic Telephone Services under the category "Telephone Service" in the ELS, but *did not* seek bids for 800 service (e.g., a toll-free telephone

² See *Power Problems: Puerto Rico's Electric Utility Faces Crippling Debt*, available at: <http://www.npr.org/2015/05/07/403291009/power-problems-puerto-ricos-electric-utility-faces-crippling-debt> (May 7, 2015).

number for students to contact school regarding questions about homework), Centrex, Radio Loop or satellite service.

- F. The Consortium *did not* seek bids for Interconnected Voice Over Internet Protocol (VoIP), or Internet access features such as Domain Name Service or Dynamic Host Configuration, all of which are included as eligible services in the ESL.
- G. The Consortium *did not* seek bids for video components such as: Master Control Unit, PVBX, Video Amplifier, Video Channel Modulator, Enhanced Multimedia Interface.

Therefore, it was an error for USAC to have categorized the Consortium's Form 470 as "encyclopedic" and, therefore, USAC did not have a basis to issue the COMADs and must rescind them.

III. Because the Consortium represents a number of different schools, each of which has different technology needs, the Form 470 had to include a reasonable number of eligible Priority One services that were responsive to the needs of each of its members.

In the Form 470 at issue, the Consortium sought bids for 13 separate schools and one administrative office, for a total of 14 billed entities. Each school is different and the technology needs of one member will not necessarily represent the needs of another. For instance, Academia Cristo de los Milagros in the municipality of Caguas has 1,146 students and Academia Santa Teresita in the municipality of Naranjito has 270 students. A technology solution that might work for a school with an enrollment of 270 students might not work for a school with an enrollment of 1,146 students. As is the case with every consortium, it was the Consortium's responsibility to include sufficient eligible services in the Form 470 to meet the needs of all of its member schools while at the same time ensuring that the Form 470 is not a general, open-ended solicitation for *all* services available on the ESL. This is precisely what the Consortium did and their members and nothing in the FCC's Ysleta Order prohibits consortia from acting in this manner. Furthermore, the Consortium selected the lowest priced bid in compliance with the FCC's rules and at no point has USAC alleged the contrary.

If the Consortium fails to include in the Form 470 a particular service that may reasonably represent the most cost-effective solution for one school consistent with the technology plan, that school will either be prohibited from seeking support for that service in its Form 471 or the Consortium will be required to amend the Form 470. This careful balancing act is unique to consortia trying to facilitate the application process for a group of applicants with diverse technology needs and student population. The Consortium's members attempted to explain this in their responses to USAC but, as explained below, this was literally lost in translation.

IV. Rescission of the funding commitments is the result of a misunderstanding generated because Consortium personnel who prepared the responses are native Spanish speakers reading and responding to USAC questions in English.

USAC's questions were provided in English. The Consortium personnel who prepared the responses are native Spanish speakers. They prepared the responses in Spanish, then translated those responses to English, and included both the Spanish and English versions in the responses to USAC. This resulted in a misunderstanding, which is best illustrated by the following sentence in the responses to USAC:

"Esto se hace con el objetivo de que al momento de completar la forma 471 y 472 las escuelas puedan obtener sus servicios."

This means that the goal in selecting eligible services that are responsive to all of the members' needs is to ensure that "schools can obtain their services." The English version of this sentence included in the response to USAC, however, reads as follow:

"This is done with the objective at the moment to complete 471 and 472 forms the schools may be able to select without limits."

As is evident, there is a significant difference between the Spanish and English meanings. The English translation's reference to select services "without limits" is almost suggestive of wasteful conduct. This is certainly not what the applicants meant to say; this misunderstanding is due solely to the fact that the people who prepared the responses are native Spanish speakers attempting a response in English.

The E-rate program is complex. The various forms and their instructions, the FCC rules and relevant orders, and USAC's guidance on its website are extremely difficult to navigate for people whose first language is not English. More particularly for this case, none of these resources are available in Spanish. Schools and libraries in Puerto Rico are at a serious disadvantage vis-à-vis the vast majority of applicants in the continental United States. Puerto Rico applicants, including the Consortium and its members, struggle to file successful applications while avoiding numerous land mines throughout the E-rate application process that, unfortunately, are not well understood due to the fact that there is a lack of information and resources in the Spanish language. This is not an insignificant consideration for Puerto Rico because its citizens contribute millions of dollars every year to the Universal Service Fund, which funds the E-rate program, and Puerto Rico contains many of the poorest students in the United States. The Consortium believes that the rescission of all the applications filed by all of its members is a draconian step that could have been avoided if USAC, cognizant of the fact that most people in Puerto Rico speak Spanish rather than English, had only reached out to the Consortium through a Spanish-speaking USAC reviewer.

V. Most of the Consortium's members did not receive questions from USAC.

Each of the COMADs indicates that USAC sent "multiple requests for documentation," that each member was asked about the service descriptions on the Form 470, that each member was asked to explain how they determined the services to request, and that each member provided the same response. However, only 3 of the 14 Consortium members received questions from USAC. Those applicants are: Colegio San Rafael (BEN 158943), Colegio Nuestra Señora del Carmen (BEN 158961) and Academia Cristo de Los Milagros (BEN 157732).

The Consortium does not know if USAC has attributed the responses of these three responding applicants to all of the members of the Consortium, or if the failure to ask the other applicants was simply an oversight by USAC. While members of Consortium relied on the same FCC Form 470, due process dictates that each applicant should have been given an opportunity to respond to these critical questions because those questions were critical to USAC's decision to rescind the funding commitments. Because the majority of Consortium members were denied the basic right to respond, the COMADs must be rescinded.

VI. Conclusion

The Consortium, on behalf of its members and the students they educate in Puerto Rico, respectfully asks USAC to grant this Appeal. The Consortium did not include all of the eligible services in the Form 470. The Consortium certainly could have included a significantly larger number of eligible services, but it did not. The Consortium believes that the rescission of the funding commitments is the result of a misunderstanding, and that the reason for such a misunderstanding is a language barrier that applicants from Puerto Rico face when participating in the E-rate program. However, such misunderstanding does not change the fact that the Consortium's Form 470 was not an "open-ended solicitation for all services."

The Consortium's members have received good and valuable services throughout the entire Funding Year 2014, and requiring their members to return funds would threaten their ability to continue to participate in the E-rate program. In total, USAC rejected approximately \$524,838 in requested E-rate funds for Funding Year 2014, of which \$190,128 had already been disbursed and USAC is now seeking repayment. This result is particularly draconian since: (i) there has been no intent to deceive USAC nor have there been any allegations of waste, fraud or abuse in this case; and, (ii) if any U.S. schools and students need the E-rate program, it is those schools and students located in Puerto Rico, which are among the poorest of any in the United States.

Respectfully submitted,

CONSORTIUM ESCUELAS CATÓLICAS

By:



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Date: June 24, 2015

cc: Mel Blackwell